



DM

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Depicker et al.

Serial No.: 10/813,249

Filed: March 30, 2004

For: AN EFFICIENT SYSTEM FOR RNA
SILENCING

Confirmation No.: 4486

Examiner: A. Mehta

Group Art Unit: 1638

Attorney Docket No.: 2676-6388US

CERTIFICATE OF MAILING

I hereby certify that this correspondence along with any attachments referred to or identified as being attached or enclosed is being deposited with the United States Postal Service as First Class Mail on the date of deposit shown below with sufficient postage and in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

October 30, 2006
Date

Betty Vowles
Signature

Betty Vowles
Name (Type/Print)

**RESPONSE TO RESTRICTION REQUIREMENT
AND SPECIES ELECTION**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The Office communication mailed October 3, 2006 has been received and reviewed. Reconsideration is respectfully requested.

The communication first issued a two-way restriction requirement. Applicants provisionally elect Group I with traverse.

One reason for the traversal is that searches for Group I and Group II should be co-extensive since Group II claim 13 is, in essence, a "product-by-process" of Group I claim 1.

Furthermore, no undue burden should be presented to the Office by searching the single claim of Group II (*i.e.*, claim 13) since a prior art search of the claim set (before being conformed to Office practice) has already been conducted by the PCT authorities in the parent application (*see, e.g.*, the last three pages of WO 03/031632 A1), which search results (and the corresponding International Preliminary Examination Report) were provided to the Office upon filing of the instant patent application.

For these reasons, applicants traverse the restriction requirement.

The Office communication went on to issue a two-way species election between plant hosts and non-plant hosts. Applicants provisionally elect “plant hosts” with traverse. Claims 1, 3, 5, 7, 9, and 11 are believed to be generic with respect to the species election. All claims 1 through 13, however, are believed to read on the elected species.

Assuming that plant hosts and non-plant hosts are independent and patentable over one another, a “reasonable number” of species may still be included in one application. 37 C.F.R. § 1.141(a). In order for this provision of Rule 141 to apply, however, the application is to include an allowable claim generic to all claimed species and all claims to species in excess of one are to be written in dependent form or otherwise include all the limitations of the generic claim. *Id.*

With respect to the species election, independent claim 1 and all claims dependent on 1 are believed to be “generic”. Dependent claim 2 is directed to the elected species. In view of the contents of the International Preliminary Examination Report issuing from the parent of this patent application, all of provisionally elected claims 1 through 12 are believed to be patentable.

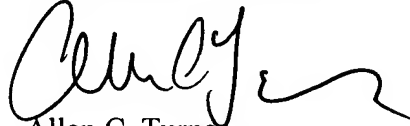
With respect to the question whether or not a reasonable number of species is included, “two” would seem to be a quintessentially reasonable number, and no unreasonable effort should be required on the part of the Office to examine the claims as they exist.

For the foregoing reasons, applicants traverse the species election.

Conclusion

Accordingly, the application is believed to be in condition for allowance. If, however, questions should exist after consideration of the foregoing, the Office is kindly requested to contact applicants' undersigned attorney.

Respectfully submitted,



Allen C. Turner

Registration No. 33,041

Attorney for Applicant

TRASKBRITT, PC

P.O. Box 2550

Salt Lake City, Utah 84110-2550

Telephone: 801-532-1922

Date: October 30, 2006

Document in ProLaw